

# Utility Withdrawal from IURC Jurisdiction



- Indiana law allows certain types of utilities to withdraw from state jurisdiction over rates, charges or issuance of debt.
- Consumers should know the advantages and disadvantages of having their utilities withdraw from IURC jurisdiction.
- The state regulatory process offers options that can help utilities save time and money.



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## Introduction

Most Indiana utilities must receive Indiana Utility Regulatory Commission (IURC) approval to change their rates, charges and finances.\* The IURC regulates approximately 700 Indiana utilities. The Indiana Office of Utility Consumer Counselor (OUCC) represents consumer interests in all cases before the IURC, acting as the public's attorney and technical expert.



However, state law allows the following types of utilities to remove themselves from – or “opt out” of – IURC jurisdiction:

- Municipal electric and water utilities
- Member-owned cooperative electric and telephone utilities
- Utilities operated by not-for-profit corporations
- Privately owned telephone utilities with fewer than 40,000 access lines
- Privately owned water and sewer utilities serving fewer than 300 customers

To withdraw from IURC jurisdiction, utilities must follow specific processes as detailed by state law. The process typically involves a vote by an elected body and/or a utility's members, depending on the type of utility. (For more details, please see the Indiana Code cites in this fact sheet.)

\* Exceptions include sewer utilities operated by municipalities and conservancy or regional sewer districts, along with water utilities operated by regional water districts. Indiana law specifically exempts these utilities from IURC rate jurisdiction. The Indiana General Assembly deregulated most telephone service offerings in 2006, with major Indiana landline telephone service providers now transitioning toward full deregulation of rates, service quality and other matters by July 2009. For most telephone utilities, the only retail service still regulated by the IURC is stand-alone basic local landline service (which cannot include any additional services such as direct-dialed or operator assisted long distance service, call waiting, caller ID, voice mail, etc.). Rates and service quality matters for wireless telephone and most other telecommunications services are not under IURC jurisdiction.

## **What You Should Know**

In most cases, the decision to “opt out” is made at the local level and may be based on any number of local issues.

Consumers should note that:

- There are advantages and disadvantages to withdrawing from IURC jurisdiction.
- Without IURC oversight, a utility’s governing board or owners will make all final decisions (subject to applicable law).
- The proper operation of a utility is complicated and requires specific expertise.
- A utility’s board or owners must have the knowledge and desire to provide quality service, charge reasonable rates and provide appropriate oversight of consultants hired by the utility.
- Most municipal and not-for-profit utility rate cases before the IURC are settled (not litigated), reflecting a mutual desire to be as cost effective as possible.
- The OUCC is available to provide information about this process to help utilities and consumers make informed decisions about the withdrawal process.

## **Advantages and Disadvantages of Withdrawn Utilities**

### **Advantages:**

1. Utilities may be able to change rates, issue debt and start new construction and capital improvements more quickly if the decisions require local approval only.
2. It avoids the expense of justifying rate changes to the IURC. A case that is fully litigated, rather than settled, typically requires expert witness testimony that may include consultants, accountants, engineers and attorneys. Fees that pay for the use of expert witnesses are normally included in customers’ rates.

3. Responsibility for reviewing the utility's decisions regarding rates and finances is fully assumed at the local level.
4. Customers with voting rights can replace members of the governing council or board, if unhappy with a municipal or cooperative utility's service or rates. While customers have this right regardless of withdrawal, they may have more incentive to exercise this right if the utility is withdrawn.

### **Disadvantages:**

1. The OUCC and IURC have experienced experts that sometimes propose less expensive or better alternatives that result in lower rates or better service. A utility loses access to these recommendations if it withdraws from Commission jurisdiction.
2. Customers challenging the legality of an action by a utility or its governing board must take action in a local court and bear the burden of proof to show a violation of the law.
3. As the cost of regulation is sometimes exaggerated, a utility may not realize "promised" savings as a result of withdrawing. Proper utility rates and operation will still require much of the same work and cost involved with IURC proceedings.
4. Customers of a withdrawn investor-owned (for-profit) utility who do not own the utility's stock have no direct control over the company's management. The OUCC can provide a voice for the interests of those customers when it presents its case to the IURC. In addition, customers who have no control over the utility's management have an opportunity to address concerns to the IURC, which is established as an impartial body.
5. Customers of a municipal utility who live outside the city or town limits are unable to register support or opposition for the utility's operation in municipal elections. IURC jurisdiction allows the OUCC to speak for those customers as well.



## State Regulation: Assistance and Options

Utilities and their customers benefit from the savings when the time and costs associated with IURC cases are reduced. With this in mind, the OUCC attempts to negotiate a fair and equitable settlement in each IURC case. The majority of cases involving municipal and not-for-profit utilities are settled.

Utilities with fewer than 5,000 customers can also save time and money through the state's "Small Utility Filing Procedure." This procedure allows utilities to use standardized forms when seeking rate adjustments and reduces or eliminates the need for assistance from attorneys or rate consultants.

In addition, certain issues can be addressed through 30-day filings and other cost-saving procedures such as wholesale water purchase trackers. More information on these procedures is available from the OUCC's "Small Utility Filing Procedure" fact sheet and the Indiana Administrative Code (170 IAC 14).



When the statutes are silent on rate setting of utilities that have withdrawn from IURC jurisdiction, then common law applies. The general standard that the court applies is that rates must be "nondiscriminatory, reasonable and just." *IN re City of Clinton Water Works Rate Schedule*, adopted 9/9/97. 707 N.E.2d 807. In such a situation, customers wanting to contest rates must do so before the utility or the utility's rate setting body, or a state court in the county in which they receive service.

# Indiana Law and Utility “Opt Outs”

This publication is a general guide to the advantages and disadvantages of utility withdrawal from IURC jurisdiction. For specific legal language, please refer to the following Indiana Code cites, available on the Internet ([www.IN.gov/legislative](http://www.IN.gov/legislative)) and at local libraries.

Municipal Electric/Water Opt Out Process:  
IC 8-1.5-3-9 and/or IC 8-1.5-3-9.1

Municipal Water Rates if Opted Out:  
IC 8-1.5-3-8.2

Non-profit and small for-profit  
Water/Wastewater Opt Out Process:  
IC 8-1-2.7

REMC Opt Out Process:  
IC 8-1-13-18.5

Small Telephone Company Opt Out Process:  
IC 8-1-2-88.5

Local Telephone Cooperative Opt Out Process:  
IC 8-1-17-22.5

Telecommunications Deregulation:  
House Enrolled Act 1279 (2006)